

29 AUG 2000



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Patent Cooperation Treaty
Legal Office

Address: Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

Leonard R. Svensson
Birch, Stewart, Kolasch & Birch, LLP
P.O. Box 747
Falls Church, VA. 22040-0747

In re Application of
KWART, et al.
Application No.: 09/485,187
PCT No.: PCT/EP98/04878
Int. Filing Date: 05 August 1998
Priority Date: 07 August 1997
Attorney's Docket No.: 147-191P
For: PROCESSES FOR INCREASING THE
YIELD IN PLANTS

DECISION ON

PETITION

This decision is in response to applicant's petition filed 05 June 2000 requesting that the response period be restarted due to delay in receipt of USPTO communication.

BACKGROUND

On 05 August 1998, applicant filed international application PCT/EP98/04878, which claimed priority of an earlier application filed 07 August 1997. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 18 February 1999. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 07 February 2000.

On 07 February 2000, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a copy of the International Application as filed as required by 35 U.S.C. 371(c)(2). An oath or declaration as required by 35 U.S.C. 371 (c)(4) was not filed.

On 22 March 2000, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that applicant must provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b). The notification set a one-month time limit in which to respond.

On 05 June 2000, applicant filed the present petition requesting that the one month time period for responding to the Notification of Missing Requirements be restarted as of 03 May 2000 because the Notification of Missing Requirements was returned to the USPTO for lack of postage and re-mailed on 03 May 2000.

On 26 June 2000, applicant provided an executed declaration and authorization to charge Deposit Account 02-2448 the proper extension fee following consideration of the present petition.

DISCUSSION

For situations like applicants, The USPTO set forth guidelines for restarting the period at 1160 OG 14, which have been incorporated into the Manual of Patent Examining Procedure (MPEP). Section 710.06 of the MPEP states the following:

The PTO will grant a petition to restart the previously set period for response to a PTO action to run from the postmark date shown on the PTO mailing envelope which contained the PTO action when the following criteria are met:

(1) the petition is filed within 2 weeks of the date of receipt of the PTO action at the correspondence address;

(2) the response period was for payment of the issue fee; or the response period set was 1 month or 30 days; and

(3) the petition includes (a) evidence showing address (e.g., copy of the PTO action having the date of receipt of the PTO action at the correspondence address stamped thereon, etc.) (b) a copy of the envelope which contained the PTO action showing the postmark date, and (c) a statement (verified if made by other than registered practitioner) setting forth the date of receipt of the PTO action at the correspondence address and stating that the PTO action was received in the postmarked envelope.

The provisions of 37 CFR 1.8 and 1.10 apply to filing of the above-noted petitions with regard to the requirement that the petition be filed within 2 weeks of the date of receipt of the PTO action.

The showings outlined above may not be sufficient if there are circumstances that point to a conclusion that the PTO action may have been delayed after receipt rather than a conclusion that the PTO action was delayed in the mail or the PTO.

Applicant's petition was filed 05 June 2000, beyond the two-week requirement. Since the applicant did not act within the two-week period, the period to respond cannot be reset.

The period to respond to the Notification of Missing Requirements was due on or before 22 April 2000. Applicant submitted an executed declaration on 22 June 2000.

However, pursuant to the provisions of 37 CFR 1.136(a) are available. As authorized in the submittal of the executed declaration, the three-month extension of time fee of \$870.00 will be charged to Deposit Account 02-2448.

CONCLUSION

Applicant's petition requesting that the response period be restarted due to delay in receipt of USPTO communication is **DISMISSED**.

The three-month extension of time fee of \$870.00 will be charged to Deposit Account 02-2448.

A review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

This application is being returned to the DO/EO/US for processing in accordance with this decision, namely preparation and mailing of the Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) indicating a date of **26 June 2000** under 35 U.S.C. 371 and 102(e).



Boris Milef
Legal Examiner
PCT Legal Office



Derek A. Putonen
Petitions Attorney
PCT Legal Office
Tel: (703) 305-0130
Fax: (703) 308-6459